

Shankar Lal. Versus State of Rajasthan
 & ors.

S.B. Civil Writ Petition No. 726/2007.

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Date of Order: February 22, 2007

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.S. Bhati, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondents to regularize his services at par with the other similarly situated employees who were regularized, with all the consequential benefits.

I have heard learned counsel for the petitioner.

It is contended by the learned counsel for the petitioner that the petitioner was initially engaged on daily wages basis on the post of Lower Division Clerk by the order dated 12.2.1988 and in pursuance of that order, the petitioner joined the duty on 14-2-1988. Thereafter the respondent No.2 passed the order dated 29-11-1989 directing not to appoint and pay regularly the employees on the post of Lower Division Clerk on

daily wages basis. A writ petition was filed before this Court challenging the order dated 29-11-1989, which came to be disposed of by this Court directing the respondents to continue the services of the petitioner. However, the services of the petitioner were terminated vide order dated 30.3.1990 without following the provisions of the Industrial Disputes Act, 1947. The petitioner moved to the Industrial Disputes Tribunal cum Labour Court and challenged the order terminating his services w.e.f. 30-3-1990. On service of notice, petitioner filed its claim, however, respondents chose to remain ex-parte and, therefore, ex-parte proceeding was taken by the Labour Court on a reference having been made and passed ex-parte Award dated 1-2-2003 Annx.1, directing the respondents to reinstate the petitioner, as also to pay him 30% of back wages from the date of reference.

The reference before the Labour Court was to the extent as to whether the termination of services of the petitioner w.e.f. 30-3-1990 was valid or not. The reference has been answered in favour of the petitioner by the award Annx.1 dated 1-2-2003, whereby petitioner was directed to be reinstated. From the award, it appears that the petitioner was engaged on daily wages basis and, therefore, the reinstatement of the petitioner by the Award Annx.1 is on daily wages. The respondents reinstated the petitioner in compliance of the Award

Annx.1 and paid 30% of back wages and as such the petitioner has been continuing on daily wages basis.

Now the petitioner seeks regularization on the ground that the similarly situated persons have been regularized. The petitioner also moved before the Labour Court under Section 33-C (2) of the Industrial Disputes Act, 1947 for payment of salary. Vide order Annx.2, the Labour Court determined the amount due at Rs.26,500/- and directed the respondents to pay the same to the petitioner within two months, else interest @ 9% per annum shall be payable on this amount.

Be that as the case may be, the petitioner is seeking regularization. Admittedly, the petitioner was engaged on daily wages basis and by virtue of the award Annx.1 of the Labour Court, he is continuing as daily wager, therefore, it has not been founded in the writ petition that the petitioner was appointed on a sanctioned post by advertising the post in accordance with the Rules prevailing for recruitment of Lower Division Clerks. In the writ petition, the petitioner has nowhere stated as to who are the similarly situated persons said to have been regularized. Merely a bald statement in the writ petition would not be of any help to the petitioner to claim parity, unless the persons with whom the petitioner claims parity, have been impleaded and foundation is made in the writ petition. In *Secretary, State of Karnataka & ors. Vs. Uma Devi (3) & ors.*, (2006) 4 SCC 1, the Constitution Bench

of the Hon'ble Supreme Court held as under:-

"It was then contended that the rights of the employees thus appointed under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employees should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

In the instant writ petition, the petitioner was engaged on daily wages basis and he is not a regularly employed

Lower Division Clerk under the relevant recruitment rules. Therefore, keeping in view the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka & ors. Vs. Uma Devi (3) & ors. (supra), I do not find any ground to interfere in the extraordinary writ inherent jurisdiction. The writ petition is, therefore, dismissed summarily. There shall be no order as to costs.

(H.R. PANWAR), J.

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